

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, August 30, 2006, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Gene Carroll, Michael Cornelius, Dick Esseks, Gerry Krieser, Roger Larson, Lynn Sunderman and Tommy Taylor (Mary Strand absent); Marvin Krout, Ray Hill, Mike DeKalb, Steve Henrichsen, Brian Will, Tom Cajka, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held August 16, 2006. Motion for approval made by Taylor, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand absent.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION

BEFORE PLANNING COMMISSION:

August 30, 2006

Members present: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor; Strand absent.

The Consent Agenda consisted of the following items: **COUNTY CHANGE OF ZONE NO. 06049, CHANGE OF ZONE NO. 06050, COUNTY CHANGE OF ZONE NO. 06051 and CHANGE OF ZONE NO. 06055.**

Ex Parte Communications: None.

Carroll moved approval of the Consent Agenda, seconded by Krieser and carried 8-0: Carlson, Carroll, Cornelius, Esseks, Krieser, Larson, Sunderman and Taylor voting 'yes'; Strand absent.

CHANGE OF ZONE NO. 06052
TEXT AMENDMENT TO TITLE 27
TO ADJUST THE MINIMUM COVERAGE AREA
AND BONUS FOR AN AG COMMUNITY UNIT PLAN
UTILIZING A COMMUNITY WASTEWATER
SYSTEM IN THE BUILD-THROUGH AREA.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 30, 2006

Members present: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson; Strand absent.

Staff recommendation: Deferral

Ex Parte communications: None.

The Clerk announced that the staff has requested that this proposal be deferred for two weeks.

Carroll made a motion to defer, with continued public hearing and action scheduled for September 13, 2006, seconded by Sunderman and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent.

There was no public testimony.

SPECIAL PERMIT NO. 06046,
DAKOTA SPRINGS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S.W. 2ND STREET AND W. SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 30, 2006

Members present: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson; Strand absent.

Staff recommendation: Deferral

Ex Parte communications: None.

The Clerk announced that the staff and the applicant have requested that this proposal be deferred for two weeks.

Carroll made a motion to defer, with continued public hearing and action scheduled for September 13, 2006, seconded by Sunderman and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent.

There was no public testimony.

ANNEXATION NO. 06014,
CHANGE OF ZONE NO. 06053,
FROM AG AGRICULTURAL DISTRICT TO
R-3 RESIDENTIAL DISTRICT,
and
SPECIAL PERMIT NO. 05015A,
AMENDMENT TO THE HARTLAND'S GARDEN VALLEY
COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT N. 14TH STREET AND HUMPHREY AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 30, 2006

Members present: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson; Strand absent.

Staff recommendation: Deferral

Ex Parte communications: None.

The Clerk announced that the applicant has requested that this proposal be deferred for four weeks.

Carroll made a motion to defer, with continued public hearing and action scheduled for September 27, 2006, seconded by Taylor and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent.

There was no public testimony.

ANNEXATION NO. 06012,
CHANGE OF ZONE NO. 06042 AND
CHANGE OF ZONE NO. 06043,
FROM AG AGRICULTURAL DISTRICT
TO I-1 INDUSTRIAL DISTRICT,
ON PROPERTY GENERALLY LOCATED
SOUTHEAST OF S. 14TH STREET AND SALTILLO ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

August 30, 2006

Members present: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson; Strand absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; and conditional approval of the changes of zone, subject to an annexation and development agreement.

Ex Parte communications: None.

Staff presentation: Tom Cajka of Planning staff explained that the annexation includes the parcels that are requesting the changes of zone plus additional property that the city owns to bring it contiguous with the existing city limits. The parcels for the changes of zone are on the south side of Saltillo Road. The rest of the annexation area would be basically Wilderness Park between the railroad right-of-way and the vacated right-of-way up to and a little bit north of Rokeby Road. Some of the main issues regarding the annexation and changes of zone have to do with city services. There is no city water or sanitary sewer that is in this area or will be available anytime in the near future. The applicants are aware and agree that to be part of the annexation agreement – that there would not be city services. What they propose to do on the sites include a concrete production facility and a warehouse distribution facility, with a well and septic system for these operations.

Cajka explained that other issues include improvements to Saltillo Road. As part of the annexation agreement, the applicant would be required to dedicate the additional right-of-way, which would be 60-65 feet from the centerline of Saltillo Road, and the applicant would be required to put in turn lanes where needed. 25th Street on the eastern edge is proposed to be a future arterial, so there would be additional right-of-way and improvements required. Another part of the annexation agreement would include some prohibited uses. The zoning changes are for I-1 Industrial zoning. With I-1 zoning, the staff is recommending that certain uses be eliminated, most of which fall under the special permit category, being more heavier industrial type uses that would not be allowed. Any commercial type uses would have to be a use that would not need city services and could function on wells and septic systems. There is currently I-1 zoning existing to the north and also to the west, so the portion of I-1 being requested already abuts I-1 zoning on two sides.

With this annexation and changes of zone, the applicant will have two separate parcels for which they can get building permits once the I-1 zoning is approved. Any additional development besides the one use on each parcel would require a preliminary plat to further subdivide the properties, and that would come back at a later time.

Larson inquired about the odd configuration, wondering whether that is to allow it to be adjacent to the city limits. Cajka answered in the affirmative. Everything south of Saltillo Road that is being annexed is also included in the change of zone to I-1.

Esseks asked Cajka to explain why that part of Wilderness Park has to be annexed. Cajka explained that according to city policy, we do not annex property that is not contiguous to the

existing city limits. Annexing that part of Wilderness Park appeared to be the best way of coming down and being able to get to the property where they want the change of zone. Otherwise, we would need to bring in a lot of other property owners. The annexation should not in any way change the status of Wilderness Park. It will remain as P Public zoned property.

Marvin Krout, Director of Planning, offered that state statutes require that annexation be contiguous to the boundaries, so it is a state statutory requirement. The Parks Department maintains Wilderness Park in this area and city police already patrol this park.

Proponents

1. Danay Kalkowski appeared on behalf of **Western Hemisphere Holding Company, Northern Lights, LLC and NEBCO**, the applicants and owners. She expressed appreciation to the Planning Commission and the neighbors for their patience in delaying these applications. The time has allowed the applicants to work with city staff and hold follow-up meetings with the neighbors and to get information to the Friends of Wilderness Park. As a result of these meetings, the associated annexation is being brought forward by the city.

NEBCO and Western Hemisphere are requesting the changes of zone from AG to I-1. NEBCO, the property to the west, is requesting the rezoning of its 24.5 acres in order to operate a concrete facility similar to the facility at 50th and Hwy 2. This facility would be centrally located to provide concrete products to the south and southwest, and would be within ½ mile of the future south beltway to aid in construction of that transportation network. The site is well-buffered on the west by Williams Tank facility, to the east by Western Hemisphere property and on the south by some open area. Western Hemisphere proposes to rezone 38 acres to operate a large distribution and warehouse facility and some small retail services. Kalkowski recalled that the Angelou plan for development for Lincoln identified 5 key growth strategies for industrial in Lincoln, and warehouse distribution was one of those 5 key areas. Western Hemisphere could accommodate a distribution center of up to 300,000 square feet and still allow room for some additional trade uses. The site is ideal for transportation services because of its close proximity to the west bypass and the proposed south beltway. Kalkowski concluded, stating that given the existing commercial and industrial uses to the west and north, the location of the existing west bypass and proposed south beltway, the highest and best use of this land is commercial or industrial.

Kalkowski noted that the Planning Department has recommended approval of the changes of zone, conditioned upon annexation and execution of an annexation agreement. The request for annexation includes these three properties, two property owners to the east and the large section of Wilderness Park. The applicants acknowledge that this property cannot be served by city water and sanitary sewer, and understand that the annexation agreement will be limited services and that the uses will have to be provided service through well water or groundwater. In addition, the neighbors to the east are also supportive of the change of zone and annexation.

With regard to stormwater detention, Kalkowski stated that the property has adequate room to retain the stormwater required for storm events by city standards. A large portion of the site can be graded so that it drains to the south to provide some additional water quality features as it drains over to Wilderness Park.

The proximity to the west bypass and south beltway and surrounding land uses make industrial zoning appropriate. Annexation is also appropriate with the limitations that have been discussed and which will be further defined in the annexation agreement.

2. Karen Griffin, environmental scientist with **Olsson Associates**, evaluated three specific questions: 1) is the water quality sufficient for concrete production in this area; 2) can a new well be installed south of Saltillo Road to produce the quality of water needed; and 3) will setting down the concrete production facility on the north side of the road and installing a well to the south affect domestic wells in this area?

With regard to water quality, Griffin stated that a sample was collected in July at the current ready-mix plant on the north side of the road. The current plant location has two wells on-site. The well on-site was sampled in July to see if it meets the water quality requirements for concrete production and meeting potable water standards, and it did meet the standards for potable water. Yes, the aquifer in this area can produce water of sufficient quality for use in concrete production.

With regard to the installation of a new well to the south, Griffin stated that there is a local well driller, Moser Drilling, out of Hickman, who has drilled quite a few of the wells in this area. He has provided information on the wells in the immediate area along Saltillo Road and to the south. Based on his well logs and the information on the geology of the area, it has been determined that the aquifer that is beneath this area is Dakota sandstone, which can produce the quantity of water needed for production of the plant on the south side of the road as well as to the north.

As far as whether shutting down the production on the north side of the road and installing a new well to the south side will affect domestic wells in the area, Griffin stated that she spoke with a couple of the neighbors who had raised this concern, i.e. Wilderness Kennels, and she believes that the influence to his domestic wells will be less. As far as the effect on Mrs. Damrow's domestic well and her cattle and hog operation, Griffin advised that based on the information on the aquifer, there is sufficient water quality and quantity to support the uses in this area.

Griffin also noted that there is a perception that the concrete plant is the largest user of water in the area. There are several irrigation wells and domestic wells as well as the concrete plant. Griffin pointed out that the irrigation wells have the capacity and rights to extract the greatest amount of water from this area.

Griffin suggested that one of the things to think about, as growth continues to the south, more of the acreage used for irrigated farmland will be taken out of production and will more than compensate for any increased water usage that would be necessary for the plant. The concrete plant estimated that the usage would increase by three-fold in the next 10 years.

Esseks inquired about how the wastewater will be processed. Specifically for the concrete plant, Kalkowski advised that the applicants will only be allowed the uses that can operate with either a septic system or lagoon system. Therefore, there will not be any discharge sewage systems. Everything will have to be contained or handled within either a septic or lagoon system.

Carlson confirmed that there is a plant already in operation on the north side. Kalkowski agreed. The plant on the south side will replace the one on the north side. The current plant is on leased ground and the new plant will be on property owned by the operator.

3. Dave Shoemaker, owner of the fuel stop at 1200 Saltillo, testified in support of the additional business and truck traffic in this area. However, he does not understand why the property needs to be annexed.

Opposition

1. Henry Sader, 2030 Saltillo Road, testified at this time. He stated that he is not really in opposition but more concerned about the reason for annexation. He also wants to know whether the geologist looked further down the road. If her study is wrong, what happens then? If he can't get any water pressure in a year, what happens? "Does that mean they cut back on their water so I can have water? Does that mean the city will rush and get water to them if they area annexed?"

Sader also suggested that the speed limit needs to be adjusted from 27th Street west because 55 mph is just too fast on Saltillo Road.

Staff response

Marvin Krout, Director of Planning, stated that as part of the proposed annexation, this section of Saltillo Road would come into the city limits because it is adjacent to property that would be annexed, and, as such, Public Works would have responsibility for that section of road. He understands that there would not be an automatic reduction of the speed limit, but it is an issue that any property owner, whether still in the county or city, could take up with Public Works.

As far as the water quantity, Krout believes there is state law that governs this issue. He believes it is basically a rule of first-come first-serve, but it is controlled by the state. He

believes that there may be some preference to agricultural and domestic over commercial uses, but he could not answer the question for sure.

Carroll referred to the annexation agreement and suggested that since there are no test wells that have been done, could the Planning Commission require a test well in the annexation agreement to verify the water. Krout agreed that the Planning Commission could recommend that as part of the annexation agreement. Krout also pointed out that this property is in Tier II and is not an area indicated to be provided water or sewer service in the next 25 years, according to the Comprehensive Plan. In this particular case, there is water and sewer which is relatively nearby. It is not an unreasonable distance and there is certainly potential over time as this area develops. As you build a south beltway with an interchange to Hwy 77, you might expect there to be an increased attraction for urban type uses. We are talking about some controls on the land uses until that might happen, but there is a possibility that water and sewer might some day be accelerated to this area, and there is even the possibility that TIF could be used as a tool to help accelerate that process. However, right now, the city does not have any plans in the CIP or beyond that to be extending water or sewer in the near term.

Krout also noted that there have been cases where there are limited annexations where the property owner acknowledges that there are services that will not be provided, but they will be paying property taxes and they will be getting city services, except for water and sewer. This situation is fairly unique in terms of the surrounding uses, the accessibility issue, and the I-1 zoning, so the question is, do we look at some additional industrial zoning in this area? We know from an economic development standpoint that there has been a lot of interest in recent years in opening up sites for large warehouse distribution facilities. It is a use that is sort of a dry use and does not take much in terms of water or sewer. Bringing this area under the city's control and within the tax base of the city does make a lot of sense. The property owners will pay property taxes, sales tax, wheel taxes and be contributing citizens of Lincoln. Most of us would say that people who live or have businesses just outside of the city basically depend on the city and its services in order to survive. Staff believes this would be more equitable in terms of development of this area, and it may help bring sewer and water to this area in the future. It also brings property taxes to LPS. We want to avoid being in situations where property becomes developed and is paying taxes to suburban school districts or rural water districts and rural fire districts. Then it becomes more difficult to come back in later and annex developed property.

Esseks inquired whether there is much wastewater in manufacturing concrete. And, if so, can a septic or lagoon manage this without some environmental hazards? Krout believes there are state controls that treat the wash-off as wastewater and require that it not be discharged into the stormwater system. Also, as part of the federal law, that site will be required to go through the permitting and approval of an NPDES permit, and that is approved by the NRD and enforced by the City Public Works Department. The purpose of that is to protect water quality, so he does believe that state laws governing concrete plants in general, and the federal law would protect the water quality.

Response by the Applicant

Griffin offered that this area is not over-appropriated. The information that she used to evaluate the current and future water use is the best available information, and it is based on the current usage rates and projected usage rates. 5,000 trucks are currently processed through that plant per year. The water usage is 4.5 acre feet now and is anticipated to be up to 15 acre feet in the future, which is much less than the irrigation potential in the area. The well is pumped and put in a holding tank and is actually only turned on 72 hours a year. In the future that would be 200 hours a year. This is in contrast to irrigation wells that are run 24-hours a day.

Griffin also confirmed that a test well will be installed before the production begins.

Kalkowski suggested that the water is only an issue until such time as water service is extended to this area. She also pointed out that a plant is already being operated with a discharge system, so she does not see the new plant being any different.

Carroll inquired of Kalkowski whether it is acceptable for the Planning Commission to require a test well in the annexation agreement. Kalkowski did not disagree, but she believes it is already a requirement.

ANNEXATION NO. 06012

ACTION BY PLANNING COMMISSION:

August 30, 2006

Carroll moved approval, subject to an Annexation Agreement, seconded by Taylor and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06042

ACTION BY PLANNING COMMISSION:

August 30, 2006

Carroll moved to approve the staff recommendation of conditional approval, subject to an annexation and development agreement, seconded by Cornelius and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06043

ACTION BY PLANNING COMMISSION:

August 30, 2006

Carroll moved to approve the staff recommendation of conditional approval, subject to an annexation and development agreement, seconded by Larson and carried 8-0: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 06040

FROM B-1 LOCAL BUSINESS TO R-2 RESIDENTIAL,

FROM B-1 LOCAL BUSINESS TO R-4 RESIDENTIAL,

FROM R-6 RESIDENTIAL TO R-2 RESIDENTIAL,

FROM R-5 RESIDENTIAL TO R-2 RESIDENTIAL,

AND FROM R-4 RESIDENTIAL TO R-2 RESIDENTIAL,

ON PROPERTY GENERALLY LOCATED BETWEEN

40TH AND 48TH STREETS, FROM RANDOLPH STREET TO "A" STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: August 30, 2006

Members present: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson; Strand absent.

Staff recommendation: Approval, as revised.

Ex Parte communications: Carroll disclosed that he had a conversation with Jim Essay and he asked Mr. Essay to e-mail the Commission members.

Additional information for the record: Steve Henrichsen of Planning staff submitted a letter from Jim Essay, representing Essman, LLC, the property owner of property located at 828-836 S. 47th Street. Mr. Essay indicates that he was not aware of this change of zone until today and he did not receive a notice. He is concerned about the value of his property and asked that it be withdrawn from this change of zone.

Staff presentation. Henrichsen pointed out that the staff report notes that the 40th & A Neighborhood Association had two neighborhood meetings, both attended by Planning staff, on April 25th and August 17th, with notice for both meetings mailed by the neighborhood association to the property owners in the area. A second notice was mailed by city staff on August 4th, four weeks prior to today. Henrichsen stated that a notice was mailed to the property owner, Essman, LLC, but it went to a different address than Mr. Essay's. It was addressed to whatever address is listed on the County Assessor records.

Henrichsen then noted that the original application included an area over by 33rd and B that has since been removed from the change of zone request. There is one house zoned B-1 which has been removed from the change of zone request, and the two vacant lots (whether R-2 or R-4) are both actually considered one lot because they are undersized. Only one duplex could be built on them.

Henrichsen observed that this application includes about 980 dwelling units overall; about 610 of those are single family, 220 units are duplexes, and then there are six multi-family buildings with 148 dwelling units. There is a fair amount of the uses that would become nonstandard in terms of lot size, but the Planning Director is bringing a text amendment forward to the Planning Commission on September 13th that will address the concern with nonstandard uses. The text amendment will clarify that if something is nonstandard due to lot size or lot width, and if it is

used for single family or for duplexes, it will be allowed to continue and will clarify that they are not nonstandard.

Henrichsen pointed out that the applicant has amended the application. The area at 41st & G Street would remain R-4. The western lot already had a spot of R-5 on it. That R-5 is now proposed to go to R-4, and then the three lots to the east would remain R-4. It is a unique circumstance where the eastern two lots were initially three lots with two houses which was replatted into two lots for potential duplex. A fair compromise came up which would leave that entire half block the same zoning --R-4 rather than R-2.

The area toward 47th Street (Mr. Essay's property) is a series of three duplexes on the east side of 47th Street. This particular area is actually correcting a zoning line going back to the 1950's where the B-1 at 48th & Randolph was arbitrarily extended beyond what was actually in commercial use at that time. The aerial photo shows a large elderly apartment complex, but the B-1 zoning line comes down through the middle of the parking lot. The rest of the property would remain R-4. This changes the B-1 to residential. On the east side of the street, the first few multi-family uses are zoned B-1 and the remainder R-4. This application on the east side of 47th would have the B-1 uses rezoned to R-4, including the Essay property. The B-1 actually prohibits residential uses on the first floor, so all of these are basically one-story uses so they are nonconforming in terms of B-1. The staff does not believe it is appropriate to have business uses on 47th Street. The B-1 zoning would remain on 48th Street, but that is not part of this application. As far as staff can tell, the B-1 was extended out and on the north side of Randolph and the Witherbee downzoning does the same thing on the north side of Randolph. There is one small area on 48th Street that is changing B-1 to R-2 – that is a house that has the B-1 zoning line running through the middle of the house. The neighborhood association is proposing that the entire house be zoned R-2. The house to the north of it would remain B-1, and then to the north of that house is the gas station and car wash.

Henrichsen also noted the letter received from Earl Visser requesting that both lots including 3333 A Street (which he does not own) be left out of the application with a future request for R-T for office use. Henrichsen suggested that the R-T should be considered in a separate application and that this application changes the lots to R-2.

Proponents

1. Tracy Lines, 1001 S. 37th Street, appeared on behalf of the **40th & A Neighborhood Association**, the applicant, stating that her voice is the voice of the majority of the residents. Lines then reviewed the timeline which the Neighborhood Association previously submitted and which is attached to the staff report dated August 21, 2006. The application was originally submitted on May 31, 2006, the intent being to preserve the residential character of the neighborhood. The application included nine months of preparation. In the fall of 2005, the Neighborhood Association decided to start undertaking the process of downzoning. Their investigation found there to be an L-shaped portion of the neighborhood that was still R-4, with most of the rest being R-2, and some spots of R-5 and R-6. In the fall of 2005, the Association

announced their intentions in the fall newsletter released in October. They formed a downzoning committee and gathered the legal descriptions of 800-1000 lots. The spring 2006 neighborhood association meeting was devoted entirely to the downzoning process.

In addition to advertising the spring meeting, the property owners in the L-shaped area were individually contacted, 718 letters were mailed, with 13 going to out-of-state property owners and another 19 to property owners outside of the neighborhood association. They hired a local marketing firm to compile the list. The spring meeting was attended by 35 individuals. At that time, only one property owner was in opposition (Tom and Rebecca Cast, 2045 and 4045 G Street). The downzone committee had concerns and wanted to work with the Casts, resulting in leaving the Cast property out of the change of zone application.

In the downzone process, an attempt was made to match current use with current zoning.

After the city's notice of the July 5th public hearing was mailed, the Neighborhood Association received about 20 inquiries. Out of those 20 inquiries, only two were against the change of zone.

A lot has happened since July 5th. The Planning Commissioners have worked diligently to review the downzone process. The Neighborhood Association feels the changes being made by the Planning Commission will benefit the neighbors as well as the city.

Lines submitted that the 40th & A Neighborhood Association has met nearly all the recommendations of the Planning Commission. Two neighborhood meetings have been held, with city staff present. Invitations to the August 17th meeting were included in the August 4th city mailing. This notice did follow the four-week notification policy being recommended and gave two-week notice of the neighborhood meeting. That letter also included an information sheet, providing answers to common questions and explained the effect of downzoning. The Neighborhood Association has worked diligently to meet the Planning Commission recommendations.

Lines also believes that the proposed text amendment scheduled for September 13th will potentially eliminate a majority of the nonstandard classifications.

Lines also pointed out that the application only contains two properties zoned R-5 and one that is zoned R-6. She has contacted these property owners and invited them to contact the city staff. She also contacted the two lots for B-1 to R-2.

Another concern expressed by the Commission was the lack of support by the neighbors. At the board meeting on March 28, 2006, the board members discussed doing a petition drive in the area, but felt that since the treasury could withstand the cost, it would be better to do a mailing. There is no requirement for a petition. However, due to the concerns of the Planning Commission, the Neighborhood Association did undertake a petition drive and today she submitted a petition with 179 additional signatures in support. Out of the 49 houses that she petitioned herself, only one was in opposition. She has only heard of two other individuals in opposition based on the petition drive.

Lines suggested that when the neighbors are concerned or feel something needs to be changed, the Planning Commission definitely will hear from them. "Please do not penalize the silent majority of our neighborhood association." There is enough density at 6.2 units per acre, and Lines quoted a property owner, "we want to keep our neighborhood just the way it is."

Esseks inquired who may lose and who may gain by this downzone. Lines suggested that because of the proposed text amendment, the only people that have to lose are people that have plans for their property to become more dense. We have tried very hard to work with these people and she believes they have come to a suitable compromise, with Mr. & Mrs. Cast and Mr. and Mrs. Sindelar. The compromise is that the Sindelars have been removed from the application because they are right on the edge and very close to a business/commercial type setting. Mr. and Mrs. Cast have a very unique situation and the Neighborhood Association felt they could work with them by taking the half block of their properties and changing it to R-4 which will allow their duplex, if they so desire.

Esseks again asked who stands to gain. Lines believes that the neighborhood as a whole stands to gain. There is a good mix of different types of properties and she believes all the neighbors will gain because they all like the neighborhood and that is why they moved into that neighborhood.

Carroll asked Lines whether she could point to any data that shows there is a density change. Lines indicated that she has a report from Urban Development in 1998 and the census data from 2000 showing that there is some increase in density. Carroll inquired whether that data shows home ownership reducing. Lines indicated that she did not look at that specifically, but did look at the number of buildings and it did increase somewhat. She has been advised by the Planning Department that at this time, with the budget cuts, it is too time-consuming to request that Building & Safety provide the building permit information.

Five individuals stood in the audience in support.

There was no testimony in opposition.

Staff response

Carroll posted the question, "how do you know it has reached its most density that it should have, and what data is available to show that?" Henrichsen believes it is one that is more subjective and based on some of the past applications. The goal in typical suburban areas is for the overall density to be about 3 dwelling units per acre for an entire square mile. Most of the downzones have been in the area of five to six dwelling units per acre and as much as 10 dwelling units per acre.

Sunderman confirmed that this will not eliminate the possibility of more duplexes. Henrichsen advised that it would eliminate the possibility on a 5,000 square foot lot. If you had a lot large enough in both width and area, it could be changed to a duplex.

Carroll noted that the Planning Commission has not yet reviewed the change on the nonstandard issue, and it may or may not be approved. He is concerned about voting on this before the nonstandard text is approved. Henrichsen believes that it is already clear in the text today that if you have a single family lot without enough lot area or width, it still may be used for a single family use. If you look at that section it is quite clear that you can continue to use or rebuild as a single family use if you can meet the setbacks. The front and side yard setbacks are not changing in this case. The vast majority of the lots here can be rebuilt and continue as a single family use. The nonstandard would not be much of an issue for very many of these lots. If the text amendment does not pass, the staff will do more of an educational effort with appraisers, mortgage insurance companies, etc.

Response by the Applicant

On the issue of nonstandard, Lines pointed out that her own single family house is nonstandard. She is doing some landscaping. When she purchased the house three years ago, it could have been easily turned into a duplex.

ACTION BY PLANNING COMMISSION:

August 30, 2006

Cornelius moved approval, as revised by the applicant, seconded by Esseks.

Cornelius stated that he supports, in general, when a neighborhood is taking out an insurance policy against density increases in the future, with a preponderance of the neighborhood in support, and sufficient safeguards against risk for those uses that may be compromised under the downzone. In that case, the neighborhood has the right to speak on someone's behalf.

Esseks thinks the Comprehensive Plan clearly encourages the Planning Commission to encourage groups like this who are trying to strengthen their neighborhood. They put so much effort into it and they really have not provoked much opposition. That suggests that this is globally acceptable. In the spirit of compromise they have excluded certain properties. It looks as though this is a really good effort to strengthen their neighborhood. He certainly would not want to be a party to any effort to discourage them. The risk in terms of upsetting the investment plans of owners is pretty small. Two of the three properties have been excised from the application.

Carroll pointed out that the Comprehensive Plan encourages efficient use of existing infrastructure and diversity of housing choices. This is shoving housing choices to the edge of the city for those who cannot afford to buy single family homes and who need to live in apartments and live in the inner core – we're pushing everybody to the edge with the downzones, which costs more to the city. It defeats the purpose. There has not been any evidence to show that the density is in threat of jeopardy of increase in the neighborhood. It is well-balanced. In the last two years, there has been a consistent price and value in this neighborhood. He does not believe the threat is there. There is no decline in house value. He understands picking selected areas and fixing those, but to take this land grab and change everything to R-2 is too much. It drives people way from this area into the edge.

Carroll moved to amend to eliminate 828-836 S. 47th Street from the change of zone, seconded by Krieser.

Carroll believes that Mr. Essay believes it will financially injure him if we change the zone on this property. If the city feels that B-1 is wrong, then at the time of the sale, the new owner can change the zoning. Mr. Essay said he never received any of the notices. Carroll does not want to harm a person's property values by changing the zone when they have not been given the opportunity to speak on it.

Carlson suggested that it might be better to change the zone ahead of the sale. Carroll suggested that it might be sold as B-1 versus R-4. He does not want to change something when the owner is in the middle of negotiating the sale.

Carlson wondered whether the B-1 on 47th is appropriate on that interior residential street. Carroll suggested that the city can battle that when it is purchased and the owner wants to use it. R-4 seems wrong for that area with those duplexes there.

Cornelius believes that area is discontinuous with the rest of the request. He is not sure how that influences his particular thinking about that area, but compared to the remainder of the downzone from various other classifications to R-2, it seems like a relatively minor consideration.

Motion to amend carried 7-1: Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll and Esseks voting 'yes'; Carlson voting 'no'; Strand absent.

Further discussion on main motion, as amended:

Larson agrees that these contiguous downzonings are forcing the affordable housing choices out to the edge which increases our need for infrastructure, and in the long run it is a bad policy.

Esseks does not believe that rental housing is currently in tight supply. It looks as though we still have a lot of rental housing. This is at a time when everything should be rented. He does not believe we have a shortage of rental housing. There is a lot of rental housing in this area. The real problem is expectations to the future. We should be able to tell these folks what to expect in the future. There is such a difference between R-2 and R-4 and there is too much uncertainty. This is a way to achieve both an adequate mix of housing and to allow the homeowners who want to stay there in a single family dwelling, which is the ideal for the American family. He believes this is an important public policy goal. He thinks we can do both.

In Larson's opinion, it is a matter of density. We're moving the density out to the edge of the city. Traditionally, the density should be the highest on the inside and lowest on the outside.

Carlson stated that there is a certain level in an established neighborhood beyond which the density starts to become the problem. Even in areas in Near South, you get close to downtown and close to the Capitol with twice this density and the lack of home ownership and increase in crime and vandalism. If you decrease the quality of life, that causes people to move out of the neighborhood more than the density. If this neighborhood has 6.7 dwelling units per acre, that is pretty reasonable. It is only 3 dwelling units per acre out on the edge. This neighborhood has more than double the typical density out on the edge. If you just look at the density picture and say it is more efficient to put more people in that area, the quality of life tends to diminish. R-2 "describes" an area and "prescribes" how it ought to go. R-2 gives a prescription of the neighborhood but describes that it should stay that way in the future. 6.7 does make efficient use of the land. Let's protect the affordable housing in the area.

Larson noted that the Planning Commission seems to be reviewing a new downzoning area every month. Pretty soon we will have downzoned all around the city.

Carlson suggested that the Commission will have the choice to look at them and determine what density they have reached and what's available in the neighborhood. It can't just be about the number.

Carroll believes that it goes back to economics. The values of the homes have increased in that neighborhood. If there was a fear or problem, the land values would not go up. It must be a good quality neighborhood the way it is. There is no data provided that there is going to be a big change. He does not think we need to fix something that is not broken yet. You are driving those people who have to rent rather than buy to go out to the edge and they can't afford to do that.

Esseks introduced experiences in Illinois where neighborhoods like this deteriorated to the point of becoming blighted and slums. Part of the vitality of these neighborhoods is that some of them have already been downzoned and some of them expect to be downzoned. There is a sense of optimism. Part of that is the belief that you can go to the city and ask support for your neighborhood. If we turn this down we are sending the wrong message. He does not believe there is a scarcity of rental housing. Some of these properties are so reasonable that it should not be that difficult to move from rental to ownership. He does not want to do anything to discourage home ownership.

Taylor agreed with Carroll and Larson, but he thinks there is an exception in this situation and he believes it should be approved.

Cornelius reiterated that it is these older established neighborhoods that are currently with the status quo. Without necessarily building large duplexes, they are providing the affordable housing right now, without any changes to the existing built housing stock. What we are doing is saying we want to protect the 120,000 sq. ft. house that is affordable in Lincoln today. Further, when talking about "if it isn't broke, don't fix it", when you talk about broke you are talking about a crisis. This neighborhood is wanting to avoid a crisis in the future.

Cornelius also believes it is possible for a neighborhood to become full. His wish would be a way to make an objective decision instead of subjective. One point that kind of highlights it is how the city is connected between the inner and outer city. We are potentially making a change to the inner part that is going to affect the costs at the outer edge of the city. As these changes are made, we have to make sure we keep room available for new residents to come in.

Motion for approval, as amended, carried 5-3: Cornelius, Sunderman, Taylor, Esseks and Carlson voting 'yes'; Larson, Krieser and Carroll voting 'no'; Strand absent. This is a recommendation to the City Council.

There being no further business, the meeting was adjourned at 2:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on September 13, 2006.